Supreme Court, U.S.
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No. 93-990

IN THE

Supreme Court Of The United States

October Term, 1993

MARY HELEN STOKES,

Petitioner,

v.

DR. KENNETH HATCH,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In reality, no legitimate question is presented by Plaintiff in her Petition for Writ of Certiorari. Since Plaintiff seeks review of a final judgment of the Supreme Court of Alabama by the Supreme Court of the United States, it would have to arise under 28 U.S.C.S. § 1257. In this case, under § 1257, a Writ of Certiorari is authorized only where a statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treatises or laws of the United States. Since no statute of the United States is questioned, it follows that Plaintiff must be questioning the validity of a State statute as being repugnant to the Constitution, treatises or laws of the United States. However, since no Alabama statute is cited, there is no legitimate question presented.

Respondent Dr. Kenneth Hatch can only present the proposition that the Supreme Court of Alabama correctly affirmed the order of the Alabama Circuit Court dismissing this cause of action.

The first question presented in the Petition asks the Court to rule or speculate on facts which are all rabid delusions of the attorney for Petitioner. No evidence or testimony on the merits was ever received. There are no facts to be considered.

The second question presented by Petitioner is no better than the first in that it again refers to totally inaccurate procedural and factual delusions of the attorney for Petitioner and seems to ask whether a Rule of Appellate Procedure of the Supreme Court of Alabama of affirming the order of a Circuit Court of Alabama without an opinion violates the constitutional rights of due process of a citizen of the United States. While Petitioner does not identify or set out the Appellate Rule which she questions, Rule 53, Alabama Rules of Appellate Procedure, does provide for affirmance of a trial court without an opinion if the court determines: (1) That an opinion in the case would serve no significant precedential purpose; and (2) That one of six designated circumstances exists. (See Appendix p. 1-a). Petitioner has not set

out the complete ruling of the Supreme Court of Alabama in her appendix since she failed to show in her appendix that the affirmance without opinion by the Supreme Court of Alabama is based on Rule 53(a)(1) and (a)(2)(F) Alabama Rules of Appellate Procedure (see Appendix p. 2-a for full copy of the ruling of the Supreme Court of Alabama). In compliance with Rule 53(b) the Supreme Court of Alabama designated that no opinion was called for due to the fact that an opinion would serve no precedential purpose (Rule 53(a)(1)) and that the judgment or order was entered without an error of law (Rule 53(a)(2)(F)).

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JURISDICTION

Again, Plaintiff is intentionally and knowingly incorrect in asserting that Dr. Ronald Alvarez was a respondent. This is simply false. The only respondent was Dr. Kenneth Hatch.

Plaintiff invokes jurisdiction "under 28 U.S.C. § 1954 as Writ". There is no such section in 28 U.S.C. Petitioner cites Amendment V and XIV of the Constitution of the United States but fails to allege how these Amendments invoke the jurisdiction of this Court.

STATEMENT OF THE CASE

The recitation of facts as presented by Petitioner is outrageously inaccurate and wholly false. The representation that the trial judge of the Alabama Circuit Court prevented "Dr. Asam" from taking the deposition of Dr. Hatch is knowingly false and patently irresponsible. There are no facts on the merits that have ever been before any court in this case. Petitioner's attorney, Mrs. Asam, has established a modus operandi in all her cases of walking into the Clerk's office and filing large volumes of medical records on the assumption that she can then argue the merits of her case regardless of any legal issues or procedural requirements.

The true statement of this case is that the Complaint filed by Plaintiff purports to allege a medical malpractice case against Defendant, Dr. Kenneth D. Hatch, who is Board Certified in Obstetrics and Gynecology. While the allegations of the Complaint are difficult to decipher, the charge seems to be that Dr. Hatch failed to prevent infection from occurring in the operation site of Plaintiff after a surgical procedure for excision of a left paravaginal/paravulvar nodule. As part of this charge, Dr. Hatch is alleged to have performed this surgery in a manner which was below the standard of care which caused Plaintiff to become infected.

Unfortunately, a statement of the case demands a rather extended presentation in order to make the sequence of events understandable. The course of the proceedings was

that after suit was filed on June 11, 1991 (R. Vol. I, pg. 1), and after interrogatories were answered by Plaintiff on October 24, 1991, (R. Vol. I, pg. 15), and after an Amended Complaint was filed on November 12, 1991, (R. Vol. I, pg. 128), there was a status docket set before the trial judge on February 10, 1992, (R. Vol. V, pg. 909) which counsel for Plaintiff failed to attend. At this hearing, the trial judge set the case for trial on September 14, 1992 (R. Vol. V, pg. 910). Thereafter with Defendant urging the identity of plaintiff's expert in order to get ready for trial, plaintiff did not amend her Answers to Interrogatories to identify the expert to be called at the time of trial and to provide information as to the opinion of the expert as to breach of any standard of care by Dr. Hatch. On March 11, 1992, Defendant filed a Motion for Summary Judgment (R. Vol. I, pg. 138) based on the amended complaint and a full and explicit Affidavit from Dr. Hatch, licensed and certified by the American Board of Obstetrics and Gynecology, setting out his activity in the surgical procedure and alleging that everything done in the procedure was within the standard of care. This Motion for Summary Judgment was originally set for hearing before the trial judge on March 24, 1992, at 8:30 a.m., but this setting was changed by a letter from the trial judge due to a personal medical problem (R. Vol. V, pg. 856), and on March 12, 1992, the trial judge entered an order that the Motion for Summary Judgment was "irrevocably" set for hearing on April 6, 1992, at 9:00 a.m. (R. Vol. V, pg. 910). While the trial judge said the hearing was irrevocable, at the request of Plaintiff's counsel, the hearing was again postponed until May 8, 1992.

Before the hearing of the Defendant's Motion for Summary Judgment, Plaintiff filed a Motion for Summary Judgment and a "Motion Objecting to Motion for Summary Judgment" on April 2, 1992 (R. Vol. I, pg. 155, 157). In the latter motion, Plaintiff's counsel, Julia McCain Lampkin Asam, Ph.D., J.D., offered herself, Dr. Julia Lampkin-Asam, Ph.D., as her own expert witness for Plaintiff! Mrs. Asam was not a medical doctor, much less certified in Obstetrics and Gyne-

cology. As a Ph.D. in Physiology, Dr. Lampkin-Asam did research in Lister Hill Medical Library in Birmingham and said that Dr. Hatch's Affidavit was insufficient because it was not substantiated by an independent expert! Defendant filed motions to strike Dr. Lampkin-Asam's Affidavit (R. Vol. V, pg. 815) and responding to Plaintiff's "Objection to Motion for Summary Judgment" (R. Vol. V, pg. 823)

No interrogatories to Dr. Hatch have ever been filed by Plaintiff. A Request for Admission was filed by Plaintiff on February 11, 1992, (R. Vol. I, pg. 136) and a Response was timely filed by Defendant on March 12, 1992 (R. Vol. I, pg. 152).

On May 5, 1992, Plaintiff filed a Motion for Continuance of the hearing on the Defendant's Motion for Summary Judgment because "fortunately, Julia Asam, has recently met Dr. Carl R. Robinson, and his son, Carl Wade Robinson, who is also a lawyer" and more time was needed for medical record review and evaluation- (R. Vol. V, pg. 826). Dr. Robinson never did materialize as an expert witness in this case!

On May 8, 1992, the trial court considered all pleadings filed and heard Mrs. Asam's argument. Again, reminding Mrs. Asam of the court's prior admonitions to Mrs. Asam that she had to have testimony or an affidavit of a competent and qualified medical expert to counter the allegations of Dr. Hatch that all his actions were within the standard of care, the trial court ruled her offerings insufficient and denied the Plaintiff's various motions (R. Vol. V, pg. 911-912). At that time, the court granted Defendant's Motion for Summary Judgment and entered a final judgment in favor of defendant (R. Vol. V, pg. 912).

On June 4, 1992, Plaintiff filed a Motion to Alter, Amend and Vacate Judgment (R. Vol. V, pg. 851) based on identical pleadings and argument presented on May 8, 1992. Then, on August 5, 1992, Plaintiff filed an amendment to her Motion to Alter (R. Vol. V, pg. 857) in which she included an Affidavit of a Dr. Timothy Marlow which stated only that Dr. Marlow was a specialist in Obstetrics and Gynecology and attended Plaintiff from June 25 to June 28, 1989 (R. Vol. V, pg.

859)! There is nothing in the affidavit to refute Dr. Hatch's Affidavit that all his care and treatment of Plaintiff was within the standard of care!

On August 5, 1992, the court considered all these motions and heard arguments and on August 12, 1992, ruled that said motions were denied, and "This Court's Order of 5-8-92 remains intact." (R. Vol. V, pg. 912).

Notice of Appeal to the Supreme Court was filed on September 21, 1992 (R. Vol V, pg. 913).

SUMMARY OF THE ARGUMENT

Petitioner filed suit on June 11, 1991, and on February 10, 1992, the trial judge set the case for trial on September 14, 1992. Petitioner did not identify her expert witness or provide any discovery as to what her expert would testify to as a breach of any standard of care by Defendant, Dr. Hatch. On March 11, 1992, Dr. Hatch filed a Motion for Summary Judgment with an Affidavit attached setting out his entire involvement in the surgical procedure and alleging that everything done by him was within the standard of care. After extended hearings and admonitions of Petitioner attorney by the trial judge, Petitioner continued to fail to produce an expert witness to counter the Affidavit of Dr. Hatch in support of his motion for summary judgment. Finally on May 8, 1992, the trial court granted summary judgment and entered a final judgment in favor of Defendant. After various post judgment motions of Petitioner were heard, the trial court denied all motions on August 12, 1992.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Dr. Kenneth Hatch, respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner, Mary Helen Stokes.

REASONS FOR DENYING THE PETITION

1. Petitioner has failed to present questions that require this Court to issue a Writ of Certiorari.

2. The questions presented by Petitioner demonstrate fictitious, frivolous and unsubstantiated issues which lack all color of merit and have no substance or foundation. Petitioner has attempted to perpetuate a fraud on this Court by failing to honestly and completely present Rule 53, Alabama Rules of Appellate Procedure, and by failing to honestly and completely present the ruling of the Supreme Court of Ala-

bama under said Rule 53, as based upon Rule 53(a)(1) and (a)(2)(F).

3. Under Rule 10, Rules of the Supreme Court of the United States, there is no special or important reason set out for granting this Petition for a Writ of Certiorari.

4. The trial court's ruling on Summary Judgment and dismissal of the case, and affirmance by the Supreme Court of Alabama were correct.

CONCLUSION

This Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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January 11, 1994

APPENDIX

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RULE 53. OPINIONS AND "NO OPINION" CASES OF THE SUPREME COURT AND THE COURT OF CIVIL APPEALS

(a) Affirmance Without Opinion. The Supreme Court or the Court of Civil Appeals may affirm a judgment or order of a trial court without an opinion if the court determines:

(1) That an opinion in the case would serve no significant precedential purpose; and

(2) That one of the following circumstances exists:

(A) The judgment or order appealed from is based on findings of fact that are not clearly, plainly, or palpably erroneous;

(B) The evidence adequately supports the jury verdict on which the judgment or order is based;

(C) In a nonjury case in which the judge has made no specific findings of fact, the evidence would support those findings that would have been necessary to support the judgment or order;

(D) The order of an administrative agency is sufficiently supported by the evidence in the record;

(E) The appeal is from a summary judgment, a judgment on the pleadings, or a judgment based on a directed verdict; and that judgment is supported by the record; or

(F) The court, after a review of the record and the contentions of the parties, concludes that the judgment or order was entered without an error of law.

(b) Designation of Category. When the Supreme Court or the Court of Civil Appeals affirms a judgment without an opinion, it shall in its order of af-

firmance designate the case as a "No Opinion" case and in its order of affirmance it shall also cite section (a) (1) of this rule and that subpart of section (a) (2) relied upon by the court in its decision to write no opinion.

STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE SUPREME COURT
OCTOBER TERM, 1992-93

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Mary Helen Stokes v. Dr. Kenneth Hatch, Appeal from Jefferson Circuit Court (CV-91-4518)

ADAMS, JUSTICE.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

Hornsby, C. J., and Almon, Steagall, and Ingram, JJ., concur.